Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from order No. 466 of 2003

United India Insurance Company
Limited, though its Divisional Manager,
Divisional Office, Nainital Road,
Tikonia, Haldwani, District Nainital

..... Appellant.

Versus

1. Smt. Mamata Mishar
   wife of late Arvind Kumar Misra,
2. Jatin Misra S/o late Arvind Kumar Misra
   R/o L.I.G. 181/38, Awas Vikas Dashmesh Nagar,
   Rudrapur, District-Udham Singh Nagar.

..... Claimant/Respondents.

3. Satyanarayan S/o Sri Chetram,
   R/o Jwala Line, Ram Nagar,
   District-Nainital (Owner of Vehicle).

..... Respondent.

.....

Sri D.S.Patni, learned counsel for the appellant,
Sri D.K. Sharma and Sri Rakesh Thapliyal, learned counsel for the respondents 1 & 2.
Sri Nand Prasa, learned counsel for the respondent No.3.

.....

Date: 2rd September, 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the united India Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 01.10.2003 passed by the Motor Accident Claims Tribunal/III Additional District Judge, Udham Singh Nagar in Motor Accident Claim Case No. 68 of 2002, whereby the claim petition was decreed against the Opp.party No.2-United India Insurance Company for a compensation of Rs.6,40,000/- alongwith interest at the rate of 9% per annum from the date of claim petition till the date of actual payment.

2- Brief facts giving rise to this appeal are that on 19.11.2001 at 9.00 p.m. the deceased Arvind Kumar Mishra and Vikram Singh Bhaisora were coming together with Scooter from Haldwani towards Rudrapur. When they were 12 Kms. away from Haldwani on Haldwani-Rampur road, Truck No. UP 02-7660 which was being driven very rashly and negligently dashed the scooter. In the said accident Arvind Kumar Mishra, who was driving the scooter, and Vikram Singh Bhasisora who was pillion rider sustained grievous injuries. They both died on the spot due to said injuries. Deceased Arvind Kumar Mishra was 29 years old at the time of accident and he was practicing advocate in District Courts, Rudrapur (Udham Singh Nagar). The claimants, who are the dependents being wife and son of the deceased, filed the claim petition on account of death of deceased.

3- The opposite parties contested the claim petition before the Tribunal by filing their separate written statements. The Opp.party No.1 admitted the ownership of the offending Truck No. UP 02-7660 but he denied all the allegations of the claim petition. He further alleged that the accident did not occur by the said truck and on the said date and time the said truck had gone to Bhatronjkhan, Devli khet, Daura Khal, Binsar Mahadev carrying the goods. A false F.I.R. was lodged deliberately involving the said truck. The Opposite party No.2-United India Insurance Company also denied the allegations of the claim petition in its written statement. The involvement of said Truck No. UP 02-7660 was also denied. It was further alleged that the accident occurred due to negligence of Arvind Kuamr Misra himself who was driving the scooter. On the pleading of the parties, the Tribunal framed necessary issues and on the basis of the evidence adduced by the parties allowed

the claim petition accordingly. Feeling aggrieved, the Untied India Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the truck in question on the date of alleged accident i.e. 19.11.2001 was not at Haldwani and the said truck had gone to different place carrying the goods. The findings recorded by the learned Tribunal in the impugned awards with respect to involvement of said truck are perverse and are not based on cogent evidence and are liable to be set aside. We have gone through the material on record and perused the impugned awards. The claimants in support of their case adduced Smt.Mamat Misra as P.W.1, Sri Sunil Khera Advocate as P.W.2, Sri Diwakar Pandey Advocate as P.W.3 and Sri Aditya Singhal Advocate as P.W.4 In documentary evidence they also filed the copy of Advocate registration certificate, first information report, Certificate of High School and post mortem report. Certified copy of chargesheet was also filed in the case. The Opp.party No.1 did not adduce any oral evidence but field copy of registration, driving licence, insurance, permit of the offending truck etc. The Insurance Company also field said papers besides technical inspection report as documentary evidence. The Insurance Company also examined Sri Chandra Pal as D.W.1 in the case.

5- The learned Tribunal while dealing with issue No.1 held that P.W.2 Sri Sunil Khera Advocate and P.W.3 Sri Diwakar Pandey Advocate on oath stated that they had seen this incident which was caused by Truck No. UP 02-7660 being driven by its driver rashly and negligently. The witnesses were cross-examined by the Opp.parties. The Opp.parties did not rebut the aid evidence by adducing any cogent evidence. Hence the testimonies of P.W.2 & P.W.3 cannot be ignored. Further, after the investigation

chargesheet was submitted by police of P.S.-Haldwani against Gopal Ram-driver of the offending truck. Hence the presence of the truck was fully proved. In the investigation police also reached at the conclusion that the said accident occurred by truck No. UP 02-7660, which was being driven by its driver rashly and negligently. Keeping in view the facts and circumstances of the case, we are of the opinion that the findings given by the learned Tribunal on the basis of the evidence on record are correct which do not warrant any interference. Since the said truck was insured with the United India Insurance Company at the relevant time, hence the Insurance Company was rightly held liable to pay the compensation.

6- The learned counsel for the appellant further contended that the driver of the alleged truck was not made party in the claim petition due to which the impugned award cannot stands on account of non-joinder of necessary party. In the claim petition the owner of the vehicle in question and the insurer have been made party. They both are contesting the case throughout. The insurer did not deny the insurance of the offending vehicle. The Insurance Compnay cannot absolve from its liability only if the driver of the offending vehicle was not made party in the case.

6- The learned counsel for the appellant further contended that the amount awarded in excessive. It is clear from the oral as well as documentary evidence, that deceased Arvind Kumar Misra a practicing lawyer. According to the assertions made in the claim petition, the deceased was 37 years old and he was getting Rs. 5,000/- per month from the advocacy. P.W.1 Smt.Mamat Misra, who is widow of the deceased, also stated on oath that the earning of the deceased was RS. 5000/- per month at the time of the accident. P.W.4 Sri Aditya Singhal Advocate also

stated that the deceased used to earn Rs. 5,000/- per month. The owner of the offending vehicle as also the Insurance Company did not make any suggestion from the witnesses regarding the earning of the deceased. We are of the opinion that the Tribunal did not commit any error in holding the income of the deceased as Rs. 5,000/- per month and rightly calculated the amount of compensation keeping in view the dependency and the facts and circumstances of the case. This argument of the learned counsel for the appellant has no force and is rejected. Accordingly, the appeal has no force on merit.

7- The appeal is dismissed. The impugned award is upheld. No order as to costs. The amount deposited in the appeal shall be remitted to the Tribunal concerned within a period of four months.

(B.S. Verma, J.) **(P.C.Verma,J.)**

02.09.2004
P.Singh